

STATE OF MICHIGAN
COURT OF APPEALS

NICOLE L. VERMEYLEN,

Plaintiff-Appellant,

v

SCOTT L. ROUSTER, CHARLENE ROUSTER,
and JAMIE OETJENS,

Defendants-Appellees.

UNPUBLISHED
February 14, 2003

No. 233967
Washtenaw Circuit Court
LC No. 01-000035-CK

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting defendants' motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) and dismissing plaintiff's complaint alleging a breach of implied contract and promissory estoppel, seeking specific performance of an alleged visitation agreement. We affirm.

Plaintiff and defendant Oetjens had a baby, Jacob, together. Jacob was born on November 8, 1993. Plaintiff and Oetjens were not married. At some point, Jacob went to live with the Rousters, Jacob's paternal grandparents. In 1999, plaintiff and Oetjens consented to the adoption of Jacob by the Rousters. Plaintiff alleges that she had had liberal visitation with Jacob while he was living with the Rousters before the adoption and that she enjoyed continued visitation with Jacob for approximately eight months after the adoption. However, at that point, the Rousters terminated any further visitations between plaintiff and Jacob. Plaintiff then unsuccessfully sought to have the adoption set aside. When that failed, she filed the instant action, alleging that there had been a promise by the Rousters to allow her continued, unlimited visitation with Jacob after the adoption, which promise induced her to voluntarily relinquish her parental rights. Plaintiff alleges that she entitled to specific performance of this alleged visitation agreement.

The standard of review of a grant of summary disposition was summarized in *Rose v National Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002):

This case arises from the trial court's grant of summary disposition in favor of defendants under MCR 2.116(C)(10). We review this issue de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In reviewing

such a decision, we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition under MCR 2.116 is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff's primary argument is that the Rousters promised to allow continued visitation with the child as an inducement to plaintiff to voluntarily relinquish her parental rights. Plaintiff's argument, however, is contradicted by her own statements at the original adoption hearing where her parental rights were terminated. At that hearing, the following exchange occurred between the family court and the biological parents (plaintiff and Oetjens):

THE COURT: Have you been promised anything or given anything in order to sign a consent for adoption?

MR. OETJENS AND MS. VERMILLION [sic]: No.

* * *

THE COURT: There may be commitments or agreements that have been made between you and the relatives who are seeking to adopt this child about visitation, for example, or pictures being exchanged or school records. Do you understand that if that order of adoption is made, that your relatives, the Rousters, will be the parents of this child, will be free to make whatever decisions they want to about visitation or contact or information, and that –

MR. OETJENS: Yes, I do.

MS. VERMISSION [sic]: Yes.

THE COURT: -- and that no agreements that you make with them are enforceable, do you understand that?

MR. OETJENS: Yes.

MS. VERMILLION [sic]: Yes.

Plaintiff clearly denied on the record the existence of any agreements. Further, and perhaps even more relevant, was specifically informed that if there was any agreement regarding visitation, it was unenforceable. Thus, plaintiff had no basis to believe that she could rely on any promises, express or implied, by the Rousters for a right to continued visitation. Accordingly, in light of plaintiff's representations to the family court at the adoption consent hearing, we agree with the

trial court that there is no genuine issue of material fact regarding any implied contract for visitation or basis for promissory estoppel arising before the adoption consent hearing.¹

Next, defendants request that we award sanctions under MCR 7.216(C) against plaintiff for pursuing a vexatious appeal. While plaintiff's position is clearly without merit, we cannot say that she pursued this case merely to be vexatious. Accordingly, we decline to award sanctions.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer

/s/ Pat M. Donofrio

¹ Plaintiff also points to the fact that the Rousters permitted some visitations after the adoption took place. However, allowing visitation hardly constitutes a contract, express or implied, for continued visitation.